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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P..No. 6765 of 2006
Date of decision:12.12.2006

M/S Kirpal Exports and another **...Petitioners**

Versus

Director of Revenue Intelligence, Amritsar and another

...Respondents

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.K.L.Goel, Advocate and
Ms.Madhu P.Singh, Advocate for the petitioner.

Mr.Ashwinie Kumar Bansal, Advocate and
Mr.M.S.Guglani, Central Govt. Counsel for the respondents.

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JUDGMENT

This petition has been filed to seek a direction to respondents to refund the amount of Rs.14.70 lacs with interest from 3.4.2003.

The case of the petitioner is that Directorate of Revenue Intelligence conducted investigation leading to arrest of petitioner No.2 under Section 104 of the Customs Act, 1962 (for short "the Act") for alleged violations of Section 135 of the Act. He was granted bail by the Chief Judicial Magistrate, Amritsar on 7.4.2003. It was noticed in the order granting bail, that he paid the amount of Rs.14.70 lacs as there was allegation of evasion of custom duty to that extent. A show cause notice was issued to the petitioner under the provisions of Act claiming duty of Rs.14.70 lacs, which was contested by the petitioner. Vide order dated 1.8.2005, Commissionerate of Customs (Adjudication) confirmed the claim of the custom duty. On appeal, the said demand was set aside vide order dated 25.10.2005 by the Appellate Authority.

The petitioners in view of the order of the Appellate Authority Annexure P-5 filed an application for refund on 2.2.2006. Since petitioners

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were not able to get any response to the said application, the present writ petition has been filed.

Notice of motion was issued on 16.5.2006. Thereafter, matter has been adjourned thrice. On the last date i.e.28.8.2006 learned counsel for the respondents made a statement that refund had already been granted.

Learned counsel for the petitioner accepts that refund have already been received vide cheque dated 18.7.2006 while the deposit was made in the year 2003. From this fact, the petitioners claim interest as provided for under Section 27-A of the Act. The said provision is reproduced below:-

> "**27-A Interest on delayed refunds:-** If any duty ordered to be refunded under sub-section (2) of Section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate (not below five per cent) and not exceeding thirty per cent per annum as is for the time being fixed (by the Central Government, by notification in the official Gazette) on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.
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> Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section(1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.
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> **Explanation** :- Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner of Customs or Deputy Commissioner of Customs under sub-section (2) of Section 27, the order passed by the Commissioner(Appeals),

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Appellate Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under that sub-section for the purposes of this Section."

Reference to the above provision shows that liability to pay interest arises on expiry of the three months from the date of application.

The application in the present case is of 2.2.2006 and cheque for refund is dated 18.7.2006. The period of three months from the date of application expired on 2.5.2006. Thus, delay of more than two months had occurred.

Learned counsel for the respondents states that application was moved at Amritsar as against Ludhiana and was received at Ludhiana on 21.2.2006. The application was not accompanied by evidence of payment.

If the date of receipt of application is treated as 21.2.2006, even then refund was required to be made on 20.5.2006. The department had statutory period of three months for verifying any facts. There was an order of the Appellate Authority in favour of the petitioners. It was a matter of record. The deposit was also mentioned in the order of the Court passed on 7.4.2003. It is not disputed that stay was rejected against the order of appellate authority by the Tribunal in an appeal by the revenue. The fact remains that the department was retaining the amount without authority of law while depriving the petitioner of its rightful use. In view of the statutory provisions of Section 27-A of the Act, we allow this petition and direct the respondents to pay interest on the amount of Rs.14.70 lacs for a period of two months calculated at the rate of 9%, as is admitted to be the rate notified under the Act, within one month from the date of receipt of copy of this order.

The writ petition is disposed of in the manner indicated above.

(Adarsh Kumar Goel)
Judge

December 12,2006 **(Rajesh Bindal)**
Pka **Judge**